IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Managing Director,Pesticides India Limited,Udaipur vs. Mohan Lal & Anr.

(S.B.C.Writ Petition No.4609/2000)

Dated:- 5th September,2006.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Mr.J.P.Joshi) Advocate
Mr.Sidharth Joshi),Advocate for the petitioner.
Mr.Tribhuvan Gupta, Advocate for the respondents.

The petitioner has challenged the order dated 12th August, 1997 by the learned Labour Court by which the disciplinary enquiry conducted by the management against the respondent-workman was held to be unfair and illegal and the award dated 19.10.2000 whereby the learned Labour Court held that removal of the respondent from the service of the petitioner is illegal and directed for his re-instatement with 50% back wages(Rs.1,70,000/-) and in the alternative directed that in case the management was not willing to re-instate the respondent-workman, pay to him a lump sum amount of compensation of Rs.3,50,000/- in lieu of re-instatement.

This Court while issuing notices to the respondents directed the petitioner to deposit a sum of Rs.1,00,000/- with the Labour Court, Udaipur. This order was later modified on 25th August, 2003 by which the amount of Rs.1,00,000/- deposited with the Labour Court was allowed to be withdrawn by the respondent-workman.

The case of the petitioner is that the respondent-workman Mohanlal Salvi was appointed in the office of the petitioner by order dated 1.8.1968 on temporary basis for the work of Mill House for a limited period of three months. His services were later continued. However various complaints were received against him with regard to his performance. He was cautioned from time to time to improve his working. A complaint was received against him on 28.3.1991 in which one Narayan Lal , a casual labour of the management complained that the petitioner was indulging in illegal extortion of money and exploitation of the workers. When preliminary inquiry was conducted on the allegation so levelled, the respondent workman virtually confessed to the allegations and charge sheet was therefore issued to him on 1st April, 1991. The petitioner denied the charges and filed reply thereto. Regular enquiry was therefore held. Enquiry Officer in his report dated 18.5.1991

(Annex.6) found the respondent guilty of the charges levelled against him. Management upon considering report of the Enquiry Officer dismissed the workman from service and served upon him dismissal order alongwith a cheque of Rs.38,882/- against all dues including the amount of gratuity on 8.6.1991. The respondent workman refused to accept the cheque and returned the same to the management. When the matter was taken to the Conciliation Officer, he recorded failure on 16.6.1992 and thus a reference was made to the Labour Court on 12.1.1993. The Labour Court by its order dated 12.8.1997 held that inquiry conducted against the respondent no. 1 was unfair and illegal and finally the award dated 19.10.2000 was passed.

The respondent contested the writ petition by filing reply and submitted that the learned Tribunal committed an illegality in holding that removal of the petitioner was illegal. The Tribunal also committed an error in directing re-instatement of the respondent workman. There was no justification for the Tribunal to have passed a conditional order that in case the management pay to the workman a sum of Rs.3,50,000/-as lump sum compensation, they shall not be required to re-instate the respondent. He has therefore prayed that the writ petition filed by the petitioner may be dismissed.

I have given my earnest consideration to the arguments advanced by the learned counsel for the parties and perused the record.

The petitioner has placed on record a copy of the complaint dated 28.3.1991 which the management received against the respondent-workman. In this complaint, one Narayanlal, a workman had alleged that the respondent-workman was harassing him. He was extorting money from him for his recruitment. He once demanded money for liquor and the workman had to pay a sum of Rs.50/- . He then asked him to bring a bag of corns worth Rs.275/- but paid only Rs.200/-. He was thereafter stated that once he asked him to bring liquor and chicken. On one occasion he even forced him to bring concrete and "bazri" from the river. When enquiry into this complaint was conducted, the Enquiry Officer recorded that conduct of the respondent-workman was highly unreasonable. The respondent-workman was found indulging in exploitation of the workman of the company. The management discharged the respondent-workman from service on 8.6.1991 and paid to him all his dues. Finally, even when the matter went to the Labour Court, the Labour Court vide order dated 12.8.1997 held the enquiry conducted by the Enquiry officer unfair and illegal and thereafter

the award was passed in favour of the workman. In this award, it was held that removal of the respondent from service was not legally justified. It was also directed that the management shall re-instate the petitioner in service and pay a sum of Rs.1,70,000/- as arrears of pay. In the alternative, it was directed that if the management do not re-instate the respondent, they shall pay the respondent a sum of Rs.3,50,000/- within a period of three months. The statement of Raza Mohammed witness of the management has also been referred. He has supported the allegations made in the complaint against the workman. According to the petitioner, the respondent-workman has attained the age of 57 years and he has left with only a very short period to serve the management.

Even if the allegations levelled against him are found to be not proved, the fact that respondent has attained the age of 57 years would at least make out a case in favour of the management for not re-instating him in service particularly when the learned Labour Court itself has directed that in case the management pay to the workman a sum of Rs.3,50,000/- in lieu of re-instatement, they would not be required to re-instate the respondent. Now at this stage when the respondent-workman is almost 57 years, it would not be just and proper to direct his re-instatement.

The question would now arise what should be the reasonable amount of compensation that may be paid to him in lieu of re-instatement. Although, the learned Labour Court has determined a sum of Rs.3,50,000/- which if paid to the respondent-workman, the management would not be required to re-instate him . 50% of that amount has been alternatively awarded as back wages to the respondent-workman for the period from June, 1991 to October, 2000. While calculating this amount, the learned Labour Court has also taken note of fact that salary of the respondent for the month of May , 1991 including dearness allowance was Rs.2070.95 and by adding the increased amount of dearness allowance, a sum of Rs.4350/- was arrived at as the amount of salary payable in the month of June, 2000. An average of Rs.3200/- was taken for the entire period of 9 years which eventually was multiplied by 112 months representing such period of 9 years and thereafter reduced by 50%, the amount of Rs.1,70,000/- was arrived at . Another formula which the learned Labour Court has applied is that if the respondent-workman would have continued in service till the date of passing of the award, he would have been entitled to receive compensation for 34 completed months which amount would have come to Rs. 1,45,000/-. This amount has been added to the salary of four years at the current rate what was

payable at the time of passing of the award and was calculated to Rs.2,03,000/-. Thus, learned Labour Court has directed that in case the management did not want to re-instate the workman, it should pay to him a lump sum amount of Rs.3,50,000/- in lieu of re-instatement. The Labour Court has completely omitted to consider that while on one hand the claims have been made at the salary amount payable in the present time, on the other hand compensation to the tune of Rs.2,45,000/- has also been added treating as if the management were to make retrenchment of the respondent workman now. In the facts of the present case, when the respondent-workman has almost completed the age of superannuation, no such basis can be applied so as to calculate the amount of calculation on the basis of assumed retrenchment. In my view a reasonable lump sum amount of payment to the respondent-workman in lieu of re-instatement should be although slightly more than Rs. 1,70,000/- as ordered by the Tribunal but at the same time such amount cannot be as high as Rs.3,50,000/- as directed by the Labour Court.

Given the factors of nature of allegations, the period of time which has now elapsed uptill now and the fact that respondent-workman may have had an opportunity to work elsewhere, in my view a sum of Rs.2,00,000/- would be a

reasonable amount which should be awarded to the respondent-workman as lump sum compensation in lieu of re-instatement. The award of the Labour Court is accordingly modified.

In the result, the writ petition is partly allowed. The award of the learned Labour Court is modified to the extent that the management will pay to the workman a sum of Rs.2,00,000/- as lump sum amount in lieu of re-instatement and payment of such amount should be made within a period of three months from the date of service of copy of the judgment. In case of delay in making payment, the respondent-workman would be entitled to receive interest @ 6% per annum from the date of the award passed by the learned Labour Court.

(MOHAMMAD RAFIQ),J.